

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
PATRICK FAGAN

Plaintiff,

v.

NCO FINANCIAL SYSTEMS, INC
ASSOCIATES NATIONAL BANK
MBNA BANK

Defendants.
-----X

COMPLAINT FOR VIOLATION
OF THE FAIR DEBT COLLECTION
PRACTICES ACT

Plaintiff Demands a Trial by Jury

08 CIV. 6208

JUDGE ROBINSON

Plaintiff, by and through his undersigned attorney, alleges, upon knowledge as to his own acts and otherwise upon information and belief, as follows:

INTRODUCTION

1. This is a civil action for damages and declaratory relief by individual consumers for Defendants' repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. 1692, et seq., (hereinafter FDCPA).
2. This action is instituted to recover damages and costs of suit, including reasonable attorneys' fees, against defendants for the injuries sustained by plaintiff by reason of the violations alleged in this Complaint. This action is also instituted to secure injunctive relief against defendants to prevent further threatened harm and damage to plaintiff.

JURISDICTION AND VENUE

3. Jurisdiction of the Court arises under 28 U.S.C. 1331 in that this dispute involves predominant issues of federal law. Defendants violated the provisions of the FDCPA. Declaratory relief is available pursuant to 28 U.S.C. 2201 and 2202. Supplemental jurisdiction exists for the state law claims pursuant to 28 U.S.C. 1367. Venue in this

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District is proper in that Defendants transact business here and the conduct complained of occurred here.

PARTIES

4. Plaintiff PATRICK FAGAN resides at 105 West Clarkstown Road, New City, NY 10956-1233, and is a consumer pursuant to the FDCPA.
5. Defendant NCO FINANCIAL SYSTEMS, INC (hereinafter "NCO") is a debt collection agency with its corporate office located at 507 Prudential Road, Horsham, PA 19044-2368 and is a Debt collector pursuant to the FDCPA.
6. Defendant ASSOCIATES NATIONAL BANK is a national bank located at 4550 New Linden Hill Road, Wilmington, Delaware 19808.
7. Defendant MBNA Bank is a national bank with its corporate headquarters located at 1100 North King St., Wilmington, DE 19884.

FACTUAL ALLEGATIONS

8. On January 12, 2008, Plaintiff received a debt collection letter from Defendant NCO Financial Systems, Inc. attempting to collect a debt in the amount of \$34,168.36.
9. The collection letter states that the debt was originally from Defendant Associates National Bank and Defendant MBNA Bank.
10. This debt is around ten years old, and therefore barred from collection by New York's six year Statute of Limitation for debt collection.
11. Upon information and belief, Defendants Associates National Bank and MBNA Bank negligently sold the debt to Defendant NCO Financial Systems, Inc for collection.

FIRST CLAIM: VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT

12. The allegations of paragraphs 1-11 in this pleading are incorporated as if fully rewritten herein.
13. Defendant NCO Credit Systems, Inc violated 15 U.S.C. 1692 e(2) by misrepresenting the legal status of the alleged debt as collectable.
14. Defendant NCO violated 15 U.S.C. 1692 e(10) by falsely representing that it had the right to collect this debt.
15. Defendant NCO violated 15 U.S.C. 1692f(1) by attempting to collect an amount not authorized or permitted by law.
16. As a direct and proximate result of these violations, Plaintiffs have been injured.
17. As a direct and proximate result of the above violations of the FDCPA, Defendant NCO is liable to Plaintiffs for declaratory judgment that Defendant's conduct violated the FDCPA, and Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

NEGLIGENCE

18. The allegations of paragraphs 1-17 in this pleading are incorporated as if fully rewritten herein.
19. Defendants Associates National Bank and MBNA Bank had a duty of care to Plaintiff in maintaining the accuracy of Plaintiff's account, including payments, deleting a discharged debt, and making sure that the debt was still collectable before selling or assigning it to a collection agency for collection.

20. Defendants Associates National Bank and MBNA Bank negligently breached this duty by selling and/or assigning the alleged debt to NCO Financial Systems, Inc for collection.
21. Defendants Associates National Bank and MBNA Bank intentionally, willfully and maliciously and/or negligently sold a time barred debt.
22. Defendant NCO had a duty to Plaintiff to investigate and ensure that the alleged debt was legally collectable.
23. Defendant NCO intentionally, willfully and maliciously and/or negligently attempted to collect a debt, which it had no legal right to.
24. As a direct and proximate result of these violations, Plaintiff has been injured.
25. As a direct and proximate result of Defendants' negligence, Defendants are liable to Plaintiff for declaratory judgment that Defendants' conduct was negligent, and Plaintiff's actual damages, statutory damages, and costs and attorney's fees.

JURY DEMAND

Plaintiff hereby demands a Trial by Jury.

WHEREFORE, Plaintiff respectfully prays that judgment be entered against Defendants for the following:

- A. Declaratory judgment that Defendants' conduct violated the FDCPA, and injunctive relief for Defendants' violations of the FDCPA;
- B. Declaratory judgment that Defendants' conduct was negligent, and injunctive relief for Defendants' negligence;
- C. Statutory damages, where applicable;
- D. Actual damages as proven at trial, on each and every claim;

E. Punitive damages;

F. Costs and reasonable attorney fees; and

G. For such other and further relief as may be just and proper.

DATED: July 4, 2008
Spring Valley, NY

/s/ Shmuel Klein
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